

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 12, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawai'i

Forfeiture of General Lease No. S-5598, Pat S. Bravo and Aude R. Bravo, Lessee,
Hakalau-iki, South Hilo, Hawaii, Tax Map Key: 3rd/2-9-02:47.

PURPOSE:

Forfeiture of General Lease No. S-5598, Pat S. Bravo and Aude R. Bravo, Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hakalau-iki, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-9-02:47, as shown on the attached map labeled Exhibit A.

AREA:

6.793 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

CHARACTER OF USE:

Intensive agriculture purposes.

TERM OF LEASE:

30 years, commencing on April 23, 2000 and expiring on April 22, 2030.

ANNUAL RENTAL:

\$17,000.00 due in semi-annual payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5598, Pat S. Bravo and Aude R. Bravo, Lessee, was served a Notice of Default by certified mail dated May 13, 2010 for:

X **Failure to keep lease rental payments current**

___ Failure to post required performance bond

___ Failure to post required fire insurance policy

___ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on May 18, 2010, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on June 17, 2010. As of July 19, 2010, this breach has not been cured.

Lessee was also served a Notice of Default by certified mail dated May 13, 2010 for:

___ Failure to keep lease rental payments current

X Failure to post required performance bond

X Failure to post required fire insurance policy

___ Failure to post required liability insurance policy

X **Other: Unauthorized subleasing, unauthorized use of State land and unauthorized structure on State land.**

Said notice, accepted by the Lessee on May 18, 2010, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on July 17, 2010. As of July 19, 2010, this breach has not been cured.

As of July 19, 2010, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$900.00 for the time period from April 23, 2010 to October 22, 2010.

INSURANCE: The Lessee **has not** posted the required **fire** insurance policy.

PERFORMANCE BOND:

The Lessee **has not** posted the required performance bond. This bond is in the form of a (CD. (*"Lessee has posted only \$2,640 of the \$3,400 performance bond required."*)

CONSERVATION PLAN:

The Lessee **has not** submitted an updated conservation plan and has shown no effort in working with NRCS to update their conservation plan.

OTHER: **Unauthorized Subleasing:** There were several persons other than the Lessee on the property, actively engaged in raising truck crops.
Unauthorized use of State Land: the unauthorized persons were living in the existing garage structure on the property without consent from the Board.
Unauthorized Structure on State Land: There is an un-permitted extension to the existing structure.

The Lessee has been served a notice of default on two previous occasions during the past two years. On July 11, 2008 they were served a notice for delinquent rent. This default was cured on July 30, 2008. The second notice of default was for an expired liability insurance policy. This notice was sent out on January 20, 2009 and was rescinded on February 13, 2009 when the Hawaii District Office received a current policy.

The default for the performance bond was a result of an increase in the lease rent. A letter was sent to the Lessee on December 7, 2009 informing them of the increase in rent and asking that they respond by either accepting or rejecting the rent increase within 30 days. A follow-up letter was sent on January 21, 2010 informing the Lessees that the new rent will take affect as they did not respond to the earlier letter. The letter also explained the increase in the performance bond and that they are responsible for providing the difference in the adjusted amount.

Staff conducted a site inspection of the property on December 23, 2009. A notice of violation from the County of Hawaii, Department of Public Works, triggered this inspection. The violation was for a large frame structure being constructed adjacent to the existing storage building without permit. During the course of the inspection, it was revealed that several persons were occupying the property in violation of the terms and conditions of the lease. The warehouse on the property was being utilized as living quarters for an unknown number of persons. When asked by staff why they were there, they responded that they had permission from the Lessee's Pat and Aude Bravo.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-5598 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5598 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of August 12, 2010, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-5598 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Gordon C. Heit
Land Agent 

APPROVED FOR SUBMITTAL:



Laura H. Thiel, Chairperson 

